

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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MILLIMAN, INC., MILLIMAN  
SOLUTIONS, LLC, and VIGILYTICS  
LLC,

Plaintiffs,

v.

GRADIENT A.I. CORP., STANFORD A.  
SMITH, and SAMUEL CHASE PETTUS,

Defendants.

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Civil Action No. 1:21-cv-10865-NMG

**DEFENDANTS' OPPOSED MOTION FOR  
LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIMS**

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, Defendants Gradient A.I. Corp. ("Gradient"), Stanford A. Smith ("Mr. Smith"), and Samuel Chase Pettus ("Mr. Pettus") (collectively, "Defendants") move for leave to file the Amended Answer and Amended Counterclaims in this action, as Exhibit 1 and 2.<sup>1</sup> Defendants' Amended Answer and Amended Counterclaims include an affirmative defense and counterclaim for unenforceability based on inequitable conduct that occurred during the prosecution of U.S. Patent Nos. 9,118,641 (the "'641 patent"); 9,323,892 (the "'892 patent"); 9,665,685 (the "'685 patent"); 9,965,651 (the "'651 patent"); 10,109,375 (the "'375 patent"); and 10,886,012 (the "'012 patent") (collectively, the "Asserted Patents") and include additional allegations related to Defendants' M.G.L. c. 93A claim.

As grounds for this motion, Defendants' state as follows:

1. Defendants have uncovered the facts underpinning the motion to amend recently during fact discovery and depositions occurring in the months of September and October, with the

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<sup>1</sup> Exhibit letters correspond to the Declaration of Kevin C. Quigley, filed herewith. Defendants are also contemporaneously filing a Motion to Impound For Purposes of Resolving Disputed Redactions to Amended Counterclaims and Exhibits.

most recent relevant fact deposition taking place on October 27. Defendants bring this motion promptly to amend the Complaint after uncovering sufficient facts in discovery.

2. Furthermore, there is no bad faith, dilatory motive, or undue prejudice to the Plaintiffs. Defendants' proposed amendments will require no additional discovery and have no bearing on expert discovery.
3. The grounds for this Motion are more fully set forth within the accompanying Memorandum in Support of the Motion to Amend the Answer and Counterclaims.

WHEREFORE, Defendants respectfully request that the Court grant this Motion to Amend the Answer and Counterclaims.

Respectfully submitted,

GRADIENT A.I. CORP., STANFORD A.  
SMITH, and SAMUEL CHASE PETTUS

By their attorneys,

/s/ Paul D. Popeo

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Dated: November 3, 2023

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel hereby certifies that counsel for Plaintiffs has conferred with counsel for Defendant concerning the subject matter of this Motion in an effort to resolve or narrow the issues raised herein, and that Plaintiffs oppose this motion.

Dated: November 3, 2023

/s/ Kevin C. Quigley

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants on the Notice of Electronic Filing (NEF) and that paper copies will be sent to those non-registered participants (if any) on November 3, 2023.

/s/ Kevin C. Quigley